

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ANANDHI MURTHY, M.D.,

Plaintiff,

v.

Civil Action No. 5:07CV46

WOODBROOK CASUALTY
INSURANCE, INC.,

Defendant.

ORDER CONFIRMING PRONOUNCED ORDER OF THE COURT
THAT PLAINTIFF BE PERMITTED TO DEPOSE DEPONENT
A SECOND TIME WITH LIMITATIONS

Findings of Fact

Plaintiff filed requests for production from Defendant which included a request for all communication between Defendant and Columbo & Stuhr, the law firm representing Plaintiff in the underlying action, concerning defense counsel's recommendations regarding settlement.

Subsequently, Plaintiff deposed Defendant's claim representative Kathryn Foutty.

After the Foutty deposition, Plaintiff subpoenaed the Columbo & Stuhr file in the underlying action.

The file contained communications between Foutty and Columbo & Stuhr concerning defense counsel's recommendations regarding settlement that Defendant did not produce in response to the original request for production.

Conclusions of Law

Fed. R. Civ. P. 30 (a)(2)(A)(ii) provides that leave of court is required to permit a person to be deposed a second time.

Leave of court for a second deposition of the same person is appropriately given when a party has diligently pursued discovery and documents pertinent to the subject matter of the deposition are subsequently discovered. Dixon v. Certaineed Corp., 164 F.R.D. 685 (D. Kan. 1996). However, it is appropriate to limit the second deposition to the subsequently discovered material. Id.

Decision

Plaintiff may depose Kathryn Foutty a second time. The scope of the second deposition shall be limited to questions relating to the subsequently discovered documents which were communications between Columbo & Stuhr and Defendant concerning defense counsel's recommendations regarding settlement.

Counsel shall agree on the time and place of the deposition by **December 31, 2007**. If counsel are unable to agree by that date, the deposition shall take place **January 11, 2008, at 10:00 a.m., in the Jury Room of the Magistrate Judge Courtroom**, United States Courthouse, Twelfth and Chapline Streets, Wheeling, West Virginia.

Filing of objections does not stay any part of this Order.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Order, file with the Clerk of the Court an original and two (2) copies of the written objections identifying the portions of the Order to which objection is made, and the basis

for such objection. Failure to timely file objections to the Order set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Order.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: December 14, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE